

# Meierhenry Sargent LLP

ATTORNEYS AT LAW

Mark V. Meierhenry  
Todd V. Meierhenry  
Sabrina R. Meierhenry  
Clint Sargent  
Patrick J. Glover

Todd V. Meierhenry  
mark@meierhenrylaw.com

RECEIVED

October 6, 2008

OCT - 8 2008

Office of Secretary  
SD Department of Environment and  
Natural Resources  
Foss Building  
523 East Capitol Building  
Pierre, SD 57501

DEPT. OF ENVIRONMENT AND  
NATURAL RESOURCES,  
SECRETARY'S OFFICE

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OCT 10 2008

Division of Financial  
& Technical Assistance

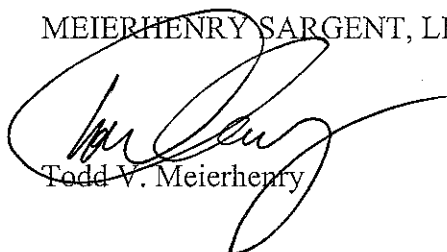
RE: *In the matter of Draft Prevention of Significant Deterioration, Air Quality  
Preconstruction Permit No. 28.0701-PSD for the Hyperion Energy Center*

Dear Sir or Madam:

Enclosed for filing, please find the original Petition for Contested Case Hearing, Motion for Scheduling Order, Proposed Order for Contested Case Hearing and Scheduling Order and a Certificate of Service. I served the same documents via facsimile this afternoon.

Sincerely yours,

MEIERHENRY SARGENT, LLP



Todd V. Meierhenry

TVM/vlb  
Enclosures

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

IN THE MATTER OF DRAFT PREVENTION     )  
OF SIGNIFICANT DETERIORATION, AIR     )  
QUALITY PRECONSTRUCTION PERMIT NO.    )  
28.0701-PSD FOR THE HYPERION ENERGY   )  
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**PETITION FOR CONTESTED CASE HEARING**

Hyperion Refining, LLC, ("Hyperion"), as applicant and operator of its refinery and integrated gas combined cycle facility, by and through its undersigned attorneys, respectfully requests a contested case hearing pursuant to ARSD 74:09:01 on the Draft Prevention of Significant Deterioration Air Quality Preconstruction Permit ("Proposed Permit") dated September 11, 2008. In support of this petition and pursuant to ARSD 74:09:01:01, Hyperion states as follows:

1. Hyperion is the Applicant for the Proposed Permit. Hyperion desires the Permit to operate the facilities and units described in the Proposed Permit associated with the Hyperion refinery and related to its IGCC facility near Elk Point, South Dakota.
2. Hyperion respectfully requests the Board of Minerals and Environment ("Board") issue the Proposed Permit in accordance with its terms, and any applicable comments received during the time provided for comment.
3. The relevant facts and applicable legal requirements regarding the Proposed Permit are contained in the application and the draft permit itself. Hyperion requests a contested case hearing because doing so is in the public interest and would advance the purposes of the administrative proceedings for this matter. A contested case hearing provides a forum where the Board can resolve any legitimate questions that may be raised about the permit by interested parties under the applicable rules.

4. The hearing would be held pursuant to ARSD 74:36:05:20.02.
5. The rules involved are found in ARSD 74:36:05.

Based on the foregoing, Hyperion further respectfully requests the Chair of the Board appoint a Chair of the Hearing pursuant to ARSD 74:09:01:08 and that a prehearing conference be scheduled to establish the dates for the hearing and a pre-hearing schedule.

Dated this 6<sup>th</sup> day of October, 2008.

Respectfully submitted,



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MEIERHENRY SARGENT LLP

Todd Meierhenry

S.D. Bar No. 1999

315 S. Phillips Ave.

Sioux Falls, South Dakota 57104

Tel: (605) 336-3075

Fax: (605) 336-2593

- AND -

MUNSCH, HARDT, KOPF & HARR, P.C.

Frederick W. Addison, III

TX Bar No. 00903350

3800 Lincoln Plaza

500 N. Akard Street

Dallas, TX 75201-6659

Tel: (214) 855-7570

Fax: (214) 978-5336

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

IN THE MATTER OF DRAFT PREVENTION     )  
OF SIGNIFICANT DETERIORATION, AIR     )  
QUALITY PRECONSTRUCTION PERMIT     )  
NO. 28.0701-PSD FOR THE HYPERION     )  
ENERGY CENTER     )

**MOTION FOR SCHEDULING ORDER**

Hyperion Refining, LLC ("Hyperion"), by and through its undersigned attorneys, respectfully moves for a prehearing and hearing schedule as attached hereto as Exhibit A, and hereby requests a Pre-hearing Conference on November 20, 2008, to set a hearing schedule for the case. In support of this motion, Hyperion would respectfully show as follows:

1. Hyperion is the Applicant for a Prevention of Significant Deterioration Air Quality Preconstruction Permit ("Proposed Permit"). The Proposed Permit is for the Hyperion Energy Center which consists of a refinery, Integrated Gasification Combined Cycle ("IGCC") power plant, and related facilities.
2. Hyperion respectfully submits a scheduling order that is important to facilitate the orderly and efficient course of proceedings. It is anticipated that the parties other than Hyperion will participate in any Contested Case Hearing. A scheduling order will provide a roadmap so that all parties will have the opportunity to participate fully and fairly, while maintaining efficiency and avoiding confusion and delay.
3. Attached is a proposed Scheduling Order.

Based on the foregoing, Hyperion respectfully requests the Board conduct a Prehearing Conference on November 20, 2009, and enter the attached Scheduling Order.

Dated this 6th day of October, 2008.

Respectfully submitted,



MEIERHENRY SARGENT LLP

Todd Meierhenry

S.D. Bar No. 1999

315 S. Phillips Ave.

Sioux Falls, South Dakota 57104

Tel: (605) 336-3075

Fax: (605) 336-2593

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Frederick W. Addison, III

TX Bar No. 00903350

3800 Lincoln Plaza

500 N. Akard Street

Dallas, TX 75201-6659

Tel: (214) 855-7570

Fax: (214) 978-5336

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

IN THE MATTER OF DRAFT PREVENTION OF )  
SIGNIFICANT DETERIORATION, AIR QUALITY ) PROPOSED ORDER FOR CONTESTED  
PRECONSTRUCTION PERMIT NO. 28.0701-PSD ) CASE HEARING AND SCHEDULING  
FOR THE HYPERION ENERGY CENTER ORDER

This matter came to the attention of the Hearing Chairman pursuant to a motion of Hyperion Refining, LLC ("Hyperion"), the applicant for Prevention of Significant Deterioration Air Quality Preconstruction Permit No. 28.0701-PSD, to establish a Pre-hearing and Hearing scheduling order in this matter. Based on a review of the record and a conference of the parties with the Hearing Chairman, it is hereby ORDERED as follows:

1. The parties shall adhere to the following schedule, which shall not be modified except by leave of the Hearing Chairman for good cause shown:

DATE	EVENT/ACTION
November 20, 2008	Status Conference with Hearing Chairman, time of day to be determined.
November 25, 2008	Parties shall disclose the identity of all persons including experts expected to testify in the parties' cases in chief or cases in rebuttal and to provide all information regarding the expert(s) required by SDCL 15-6-26(b) and 15-6-26(e). The parties shall also exchange preliminary lists of witnesses expected to testify at the hearing in this matter. Written Discovery may also begin on this date, and will end on January 30, 2009.
January 20, 2009 – February 20, 2009	Depositions.
February 27, 2009	Deadline to complete discovery. Any interrogatories, requests for production, or other written discovery requests shall be properly served so as to require answers or responses be provided prior to this deadline.
March 10, 2009 – March 20, 2009	Reserved for Hearings, specific time and place to be announced.
March 31, 2009	Deadline to submit proposed findings of fact and conclusions of law.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

By: \_\_\_\_\_  
Hearing Chairman

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
BOARD OF MINERALS AND ENVIRONMENT**

IN THE MATTER OF DRAFT PREVENTION     )  
OF SIGNIFICANT DETERIORATION, AIR     )  
QUALITY PRECONSTRUCTION PERMIT NO.   )  
28.0701-PSD FOR THE HYPERION ENERGY   )  
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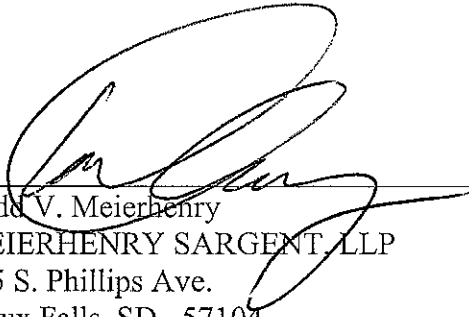
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Petition for Contested Hearing Case, Motion for Scheduling Order and proposed Order for Contested Case Hearing and Scheduling Order via facsimile to the Office of the Secretary of the Department of Environment and Natural Resources, 605-773-6035 at approximately 4:57 o'clock p.m., and via

U.S. Mail, postage prepaid to:

Office of the Secretary  
SD Department of Environment and Natural Resources  
Foss Building  
523 East Capitol Avenue  
Pierre, SD 57501

on this 6<sup>th</sup> day of October, 2008.

  
\_\_\_\_\_  
Todd V. Meierhenry  
MEIERHENRY SARGENT LLP  
315 S. Phillips Ave.  
Sioux Falls, SD 57104  
(605) 336-3075  
(605) 336-2593 facsimile  
*Attorneys for Hyperion Energy Center*